

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1720 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

LAXMANBHAI D PATEL

Versus

BHAVNAGAR DIST COOP SALE & PURCHASE UNION LTD

Appearance:

MR BM MANGUKIYA for Petitioner

MR PV HATHI for Respondent No. 1

MS MANISHA LOVEKUMAR AGP for Respondent No. 2

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 13/07/1999

ORAL JUDGEMENT

In this petition under Articles 226 and 227 of the Constitution, the petitioner has challenged the judgment and order dated 31.8.1981 (Annexure "G") passed by the Gujarat State Co-operative Tribunal dismissing the petitioner's appeal (No. 220/78) against the report dated 19.8.1978 (Annexure "D") of the Inquiry Officer under Section 93 of the Gujarat Co-operative Societies

Act, 1961 (hereinafter referred to as " the Act ").

2. The petitioner was at the relevant time the President of the Bhavnagar District Co-operative Sale and Purchase Union Ltd.(respondent no.1 hereinafter called the "District Union" or the " respondent society"). The petitioner ceased to be President of the respondent society on 16.9.1974 when administrator was appointed by the State Government. The accounts of the said District Union were examined for three Co-operative Years from 1.7.1971 to 30.6.1974. Under Section 86 of the Act, the District Registrar appointed Mr. D.H.Dave to hold an inquiry into the constitution, working and financial condition of the District Union. On receipt of the report pointing out serious irregularities, the Registrar appointed an officer to conduct investigation under Section 93 of the Act to fix responsibility on any officer who had taken part in the organization or management of the District Union and had during the relevant time misapplied or retained or become liable or accountable for any money or property of the society, or had been guilty of misfeasance or breach of trust in relation to the District Union. A report under Section 93 of the Act was made, inter alia, against the petitioner holding the petitioner liable for certain charges and directing the petitioner to make payment of the amounts specified in the said report dated 19.8.1978. Aggrieved by the said report, the petitioner filed appeal No.220/78 which came to be dismissed by the Gujarat Co-operative Societies Tribunal by its judgment dt. 31-8-1981 which is impugned in the present petition. While admitting the petition, this Court refused to grant interim relief.

3. The report dt. 19-8-1978 of the Inquiry Officer (Annexure D) runs into 129 pages. The Inquiry Officer looked into all the charges levelled against the petitioner and certain other office bearers of the District Union. In all there were 13 charges levelled against different office bearers of the respondent society including the petitioner who was President of the respondent society at the relevant point of time and Bhavchandbhai N. Patel who was the Secretary of the respondent society at the relevant time. The Inquiry Officer in his aforesaid report under Section 93 of the Act gave findings that charge nos.1, 2, 3, 6, 8, 9 and 10 (Part 1) were not proved. The Inquiry Officer however found that the other charges were proved. The details about the amounts payable and persons held to be liable by the Inquiry Officer & the Tribunal are tabulated as under :-

Charge Amount to be Held to be Modification by
No. recovered liable to pay Tribunal
(as per Inquiry
Officer

4 Rs. 1,721 Petitioner Amount reduced to
(L.D. Patel) Rs.92.99

5 Rs. 21,850 Petitioner No modification
& Secretary

7 Rs. 5,600 Petitioner No modification
& Secretary

10/2 Rs. 45,602 Petitioner Liability of
& Manager Secretary &
Manager

11 Rs. 10,368 Petitioner, Liability of
Secretary Petitioner,
& Manager & Manager.

12 Rs.2,88,956 Petitioner No modification
Secretary &
Manager

13 Rs. 1,208 N.K.Zaghadiya Exonerated
Zaghadiya

The details about charges will be given a little later.
The Tribunal confirmed findings of the Inquiry Officer
subject to the following modification:

(i) As regards Charge No.1, liability of the
petitioner was reduced to Rs.92-19 Ps.

(ii) As regards Charge No.10/2, liability was held to
be that of Manager Umesh Oza and Secretary,
Bhavchandbhai.

(iii) As regards Charge No.11, liability was held to be
that of petitioner and Manager Umesh Oza, and not of
Secretary -Bavchandbhai.

(iv) As regards Charge No.13, the Tribunal exonerated
N.K.Zaghadiya from the charge.

4. Incidentally, Bavchandbhai Patel is reported to
have expired after the judgment of the Tribunal
and Manager Umesh Oza succeeded in his petition (Special

Civil Application No. 1099 of 1982) decided by this Court on 4/3/1994.

5. We may first deal with Charge Nos. 4 and 11 which are held to be proved against the petitioner as per findings of the Inquiry Officer as well as the Tribunal, but which are comparatively of minor nature. Charge Nos. 5, 7 and 12 will be taken up a little later as they are interconnected and are more serious.

CHARGE NO.4

6. As regards Charge No.4, the amount involved is Rs.92-19 ps. which is very small. Mr. Mangukiya has, therefore, not pressed challenge to the finding on the said charge. Even otherwise, this court is not inclined to interfere with the finding given by the Inquiry Officer and the Tribunal, as the respondent society did suffer loss of interest on the amount, which on the instructions of the petitioner as President of respondent society, was paid for registration of membership of co-operative societies which were not enrolled as members of the respondent society at the relevant time. The substantial amount was, of course, subsequently received back by the respondent society. The Tribunal has discussed the said charge in detail in Para 26 to 30 of its judgment and given its finding that loss of interest was to the tune of Rs.88-19 Ps. and Rs.5/- was wrongly paid as Membership in respect of one society which amount was not received back.

CHARGE NO. 11

7. As regards Charge No.11, the charge found to have been proved by the Inquiry Officer against the petitioner and the manager was that there was deficit in stock of Bajara to the tune of Rs.10,368/-. The Inquiry Officer held the manager primarily liable for said deficit and held the petitioner (the then President of the respondent society) responsible for lack of supervision. The Tribunal exonerated Bavchandbhai Patel, the then Secretary from liability on the ground that quantity of Bajara supplied by staff to the purchaser was inadvertently not reflected in the bill when it was issued by the staff, and therefore, the Manager was himself responsible and the Secretary could not be held responsible. It is surprising to note that the Tribunal did not apply the same reasoning to the petitioner otherwise, the same benefit could have been given to the petitioner. In any case, in Special Civil Application No. 1099 of 1982 filed by Umesh B. Oza, the then Manager of the respondent society, this Court (Coram: Mr. Justice D.G.Karia) in the judgment dt. 4-3-1994

has held that the petitioner in that case i.e. the manager was not personally dealing with the stock and hence could not be held liable for the alleged shortage of stock. In this view of the matter, when the then Manager has been exonerated by this Court, it would not be possible to sustain the charge against the petitioner for lack of supervision over the Manager. Hence the finding on Charge No.11 given by the Inquiry Officer and confirmed by the Tribunal holding the petitioner liable to pay the respondent society the amount to the tune of Rs.10,368/- will have to be set aside.

8. That brings us to the main charges levelled against the petitioner being Charge Nos. 5, 7 and 12 which are some what similar in nature and are interconnected.

CHARGE NO. 5

9. Charge No.5 against the petitioner was that under his instructions, the respondent Society purchased pesticides in large quantities which were not required and remained unsold for a considerably long period. The petitioner was the President of respondent society and Bavchandbhai was the Secretary in the year 1973-74 ending on 30-6-1974 and till appointment of the Administrator on 16-9-1974. The following figures are given in the report of the Inquiry Officer to show how in the year 1973-74, the petitioner and the Secretary had given instructions for purchase of excessive pesticides not required by the respondent society :

Year	Purchase	Sale	

1971-72	Rs. 78,554/-	Rs.63,551/-	
1972-73	Rs. 71,120/-	Rs.48,001/-	
1973-74	Rs 2,17,277/-	Rs.74,904/-	

Both the Inquiry Officer and the Tribunal found that although in previous years, the quantity of pesticides purchased or sold never exceeded the value of Rs.78,000/in the year 1973-74 (co-operative year between 1-7-1973 and 30-6-1974), the petitioner and the Secretary instructed the Manager to purchase the pesticides in three times the quantity required. At the time of commencement of the year 1973-74, opening stock of pesticides was Rs.41,453-40 Ps. and therefore, looking to the pesticides purchased and sold in the past years, the respondent society was not required to purchase any substantial quantity of pesticides but the petitioner and the Secretary gave instructions to purchase pesticides worth Rs.2,18,277/- from the Gujarat Agricultural

Development Corporation, Bhavnagar in which the petitioner as well as the Secretary (Bavchandbhai Patel) were interested. Both the Inquiry Officer and the Tribunal have given findings that the said firm was constituted only with effect from 14-3-1974 as per the document dt. 15-4-1974 which was on record before the Inquiry Officer at Ex.123/17/8. In December, 1974, there was a change in the constitution of the firm by which the son of present petitioner was induced as a partner in place of Bavchandbhai Patel. The Inquiry Officer as well as the Tribunal have noted that as per the letter head (ex. 163) of Bharat Fertilizers Seeds & Pesticides from which the respondent society, under instructions of the petitioner and the Secretary, purchased seeds of the value of Rs.3,71,000/-, the Gujarat Agricultural Development Corporation, Bhavnagar, from whom under the instructions of the petitioner and the Secretary of respondent society, purchased pesticides of the value of Rs.2,17,277/- and Patel Fertilizers, Rajkot, to whom under the instructions of the petitioner and the Secretary of the respondent society, sent Rs.5 Lacs in advance and got fertilizers worth only Rs.20,000/- and still another firm, the Bharat Traders, Surat - all these four firms were shown as sister concerns of the Bharat Fertilizers Seeds & Pesticides. Thus constitution of the firm, in which the petitioner as well as the Secretary Bavchandbhai Patel were interested, with effect from 14/3/1974, (as reflected from the document dt. 15/4/1974) and purchase of pesticides, three times the quantity which was purchased in previous two years, in the year 1973-74 after 14-3-1974 when the petitioner was the President of the respondent society and Bavchandbhai Patel was the Secretary of the said society are telltale circumstances which cannot be brushed aside as errors of judgment in the ordinary course of business even if it be the business of a co-operative society for agricultural activities, merely on the ground that there was less rainfall in that particular year and, therefore, demand was less. The objection raised by the Audit Officer -that there was nothing on record to show that any reasonable estimate or assessment was made indicating possible higher demand and that too three times the demand in the previous year -was not a mere technical objection, but the objection went to the root of the matter to show that without any exercise having been undertaken for estimating demand for the year 1973-74, the petitioner (President) and the Secretary purchased pesticides worth Rs.2,18,277/- from Gujarat Agricultural Development Corporation, Bhavnagar in which the petitioner as well as the Secretary were interested, as against pesticides purchased by respondent society in

previous two years, when purchase never exceeded Rs.78,000/- per year, and even as against the value of pesticides sold in previous two years being only Rs.63,000/- to Rs.64,000/-. Such excess quantity of pesticides remained with the respondent society not only in the year 1973-74 but also in the years 1974-75 and 1975-76. Therefore, on the stock remaining idle with the respondent society, the Inquiry Officer assessed loss of interest at Rs.21,815-94 Ps. which was the interest calculated for the period from 30-4-1974 to 30-6-1976 at the rate of 14% per annum as per calculations made on internal Page 45 of the report of Inquiry Officer (Paper Book Page 105). The Inquiry Officer further added the rider that if the respondent society could sell all stock still lying with it and that if the loss suffered by the respondent society was less than the loss of interest as calculated above, the petitioner and the Secretary would get credit for the same and if the loss suffered by the respondent society upon such sale was more than Rs.21,815-94, the petitioner and the Secretary would be jointly and severally liable to make good the said loss. The Tribunal has also confirmed the aforesaid findings after dealing with all the contentions raised on behalf of the petitioner. It is also pertinent to note that no documentary evidence was led either by the petitioner or the Secretary Bavchandbhai Patel or any other person to controvert the charge that the pesticides were purchased on the instructions of the petitioner and the Secretary without any resolution of the Managing Committee or without any document on record of the respondent society to show any estimate of demand during the relevant year or to show that the petitioner did not have any interest in the Gujarat Agricultural Development Corporation, notwithstanding the document at Ex. 123/17/8. The concurrent finding given by the Inquiry Officer and the Tribunal cannot be stigmatized as perverse or without basis.

CHARGE NO. 7

10. So far as Charge No.7 is concerned, on the instructions of the petitioner, the respondent society sent the following amounts to Patel Fertilizers which was a sister concern of Gujarat Agricultural Development Corporation (as per letter head at Ex.163) in which the petitioner and the Secretary Bavchandbhai had interest as stated above:-

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Date   Amount   Mode of payment
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27-4-74   Rs.1,00,000/-   Draft
17-5-74   Rs.1,00,000/-   -do-
21-5-74   Rs.2,00,000/-   Telegraphic
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Transfer

24-5-74 Rs.1,00,000/- -do-

As against the aforesaid advance of Rs. 5,00,000/-, all that the respondent society received by 22-5-1974 was fertilizers only to the tune of Rs.20,285/- and the amount of Rs.4,79,915/- remained with Patel Fertilizers for about a month thereafter. The defence of the petitioner (not through any oral or documentary evidence led by or on behalf of the petitioner or the Secretary but by way of suggestion to the Inquiry Officer in his cross-examination) was that at the relevant time, there was a strike of the Railway Employees, and therefore, the petitioner and the Secretary thought it advisable not to spend extra freight for carrying fertilizers through trucks, and therefore, they asked the Patel Fertilizers to refund the amount and out of Rs.4,79,915/-, amount of Rs.2,01,415/- was adjusted by way of Hawala entry which was made by the Patel Fertilizers in favour of Bharat Fertilizers Seeds and Pesticides which supplied cotton seeds to the respondent society as per arrangement worked out between the parties. The Inquiry Officer as well as the Tribunal have rightly observed that if there was a strike of the Railway Employees, a co-operative society like the respondent society would not send the amount of Rs.5,00,000/- by way of draft and telegraphic transfers. Moreover, neither the petitioner nor the Secretary Bavchandbhai Patel produced any resolution of the Managing Committee to send such amounts by way of advance for purchasing the fertilizers. There was no Purchase Order or receipt from the Patel Fertilizers. In fact, the Tribunal has drawn adverse inference that Patel Fertilizers, which was a sister concern of the Gujarat Agricultural Development Corporation as well as the Bharat Fertilizers Seeds and Pesticides, did not want to return the entire balance amount of Rs.4,79,915/-, and therefore, the respondent society was made to purchase cotton seeds of the value of Rs.3,17,000/- for which also there was no justification (which is the subject matter of Charge No.12). The Inquiry Officer, therefore, fixed the liability of the petitioner at Rs.9,600/- by way of loss of interest on the aforesaid amount of Rs.4,79,915/- for a period of one month. No reasonable person can find fault with the aforesaid finding on Charge No.7.

CHARGE NO. 12

11. Charge No.12 against the office bearers including the petitioner is that as cotton seeds worth Rs.3,71,200/- were purchased after making advance payment of Rs.75,000/- from a private party without any

resolution of the Managing Committee, without estimating the demand and without inviting any tenders and with a view to benefit to the private party and thereby the respondent society had to suffer a loss of Rs. 2,88,956/- and also loss of interest thereon as the cotton seeds stock was received after a delay of two and half months after the advance payment and on account of delay, the stock could not be put to sale.

As already pointed out earlier the Bharat Fertilizers Seeds and Pesticides was a sister concern of the Gujarat Agricultural Development Corporation in which the petitioner as well as the Secretary Bavchandbhai Patel had interest. An advance of Rs.5,00,000/- was paid to another sister concern (the Patel Fertilizers) between 27th April, 1974 and 24th May, 1974 against which the Patel Fertilizers had sent goods of the value of Rs.20,085/- only. The Patel Fertilizers gave Hawala entry of Rs.2,01,415/- in favour of the Bharat Fertilizers Seedes & Pesticides (which was thus not returned to the respondent society) and against the said amount, the Bharat Seeds Fertilizers & Pesticides supplied 4640 Kgs. of cotton seeds for Rs. 3,71,200/- the respondent society.

Earlier stock of 179 Kgs of cotton seeds was lying with the respondent society. as opening stock. By 30-6-1974, the respondent society sold only 30 Kgs. of cotton seeds for Rs.2,222. Without making any estimate or assessment of the demand, on 9-6-1974 and 11-6-1974 the respondent society purchased under instructions of the petitioner and the Secretary, 2,640 Kgs. and 2,000 Kgs. of the Cotton Seeds i.e. total 4,640 Kgs. for a total price of Rs. 3,71,200 (inclusive of advance amount of Rs.75,000 paid on 15-4-1974) and that at too from the Bharat Seeds Fertilizers & Pesticides which was a sister concern of another firm in which the petitioner and the Secretary Bavchandebhai had interest. All facts taken together, they would go to show that the petitioner (President) and Bavchandbhai (Secretary) had misapplied the funds of the respondent society.

12. Of course, Mr. Mangukiya, learned counsel for the petitioner has submitted that Charge No.12 merely stated that respondent no.2 had suffered loss because of delay in delivery of cotton seeds and that there was no charge that the respondent society had suffered loss on account of any excess purchase. First part of the charge refers to delay but the second part of the charge alleging that the petitioner, secretary and the Manager had committed the breach of trust and caused loss of

Rs.2,88,950/- to the respondent society with a view to benefit a private party was sufficient to justify the finding given by the Inquiry Officer and confirmed by the Tribunal as discussed above. More over in reply to the chargesheet, the petitioner had tried to defend this action on merits and he did not appear to have been misled by framing of the charge, nor did he complain about vagueness of the charge. Even at the time of arguments before the Tribunal, (as shown in Paragraphs 57 to 60 of the judgment of the Tribunal), no grievance was made on behalf of the petitioner that the petitioner suffered any prejudice because there was difference in the wording in the charge framed and charge proved against the petitioner.

13. Another contention of Mr. Mangukiya in connection with Charge No.12 was that the respondent society had not suffered any loss but had made the profit on the sale of cotton seeds. Here, it is required to be noted that the finding given by the Inquiry Officer, confirmed by the Tribunal is that there was a joint account for sale of Bajara and cotton seeds called "Shanker 4 ". Hence the profit of Rs.29,080/- cannot be attributed to the sale of cotton seeds, particularly, when by 30-6-1974 (end of co-operative year 1973-74), cotton seeds weighing only 30 Kgs. was sold at the price of Rs.2222/- . It is, therefore, obvious that the profit of Rs.29,080/- in the Seeds Accounts for the year ended 30-6-1974 could not be attributed to the quantity of cotton seeds (4640 Kgs. purchased at the price of Rs.3,11,200/-) by the respondent society under instructions of the petitioner and the Secretary from the Bharat Pesticides Seeds & Fertilizers Corporation, Rajkot.

GENERAL CONTENTIONS :-

14. Another contention of Mr.Mangukiya is that since Special Civil Application No. 1099 of 1982 filed by the the manager of respondent society against the respondent society has been allowed by this Court on 4-3-1994 this petition also deserves to be allowed.

The contention cannot be accepted. As already pointed in the summary or the charges proved against the petitioner and others (Para 3 of this judgment), Charge Nos. 4,5, and 7 were not proved against the then Manager -Umeshbhai Oza, the decision in favour of the then Manager Umeshbhai Oza rendered in Special Civil Application No.1099/82 in respect of Charge Nos. 10(2) and 11 is of no avail to the petitioner in respect of Charge Nos. 5,7 and 12 proved against the petitioner.

In respect of Charge No.11 -where Umeshbhai Oza was found to be primarily liable for the deficit of stock and the petitioner was held to be liable only vicariously because of lack of supervision -the benefit of the finding in favour of Manager -Umeshbhai Oza has already been given to the petitioner as discussed in Para 7 above.

While discussing Charge No.12 in the judgment in Special Civil Application No. 1099 of 1982, this Court, however, observed as under :-

The petitioner (Umesh B. Oza) in his capacity as Manager of the society cannot be held liable for placing the order inasmuch as it is clear that said order was placed on the instruction of the President and the Secretary of the society ".

In view of the above observations, the judgment of this Court in the case of the Manager rather than helping the petitioner goes against the petitioner.

15. Mr. Mangukiya for the petitioner further submitted that the provisions of Sec.93 of the Act covered only acts of misappropriation or misfeasance which must be proved beyond reasonable doubt as the proceedings were quasi criminal in nature; more over, there was no charge or finding that the petitioner had obtained any personal benefit out of the transactions in question particularly with reference to Charge Nos. 5,7 and 12.

The contention is misconceived. The scope of Sec.93 of the Act is not as narrow as submitted on behalf of the petitioner. The relevant portion of Section 93 reads as under :-

Section 93(2):-

Where, in the course of an inquiry under section 86..... the Registrar is satisfied on the basis of the report made by the auditor under section 86, that any person who has taken any part in the organisation or management of the society or any deceased, or past or present officer of the society has, within a period of five years prior to the date of such audit, inquiry, misapplied or retained, or become liable or accountable for, any money or property of the society, or has been guilty of misfeasance or breach of trust in relation to the society, the Registrar or a person authorised by him in that behalf may investigate the conduct of such person

or persons and after framing charges against such, person or persons, and after giving reasonable opportunity to the person concerned, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof, with interest at such rate as the Registrar or the person authorised under this section may determine, or to contribute such sum to the assets of the society by way of compensation in regard to the misapplication, retention, misfeasance or breach of trust, as he may determined.

Sub-section (2) empowers the Registrar or the authorised officer to provide for the payment of costs of any part thereof of such investigation and for recovery thereof from the person against whom order has been issued. Sub-section (3) provides that Section 93 shall apply, notwithstanding that the act is one for which the person concerned may be criminally responsible.

The provisions of Section 93, therefore, are not confined to misfeasance or breach of trust. In the instant case, as per Charge Nos. 5,7 and 12, found to have been proved against the petitioner by the Inquiry Officer under Sec. 93 of the Act, as well the Tribunal in appeal which are confirmed by this court, the petitioner had at least misapplied the funds of the respondent society, and therefore, the impugned orders are not outside the scope of Sec.93 of the Act.

16. As regards the contention about the standard of proof required in such inquiries, the charge is not to be proved beyond reasonable doubt as required in a criminal trial. In such cases, even when the charge is of quasi criminal nature, preponderance of probabilities is the test to be applied. The material on record coupled with the fact that the petitioner or any other office bearer did not choose to lead any oral or documentary evidence was sufficient to prove the concerned charges against the petitioner on the touchstone of preponderance of probabilities.

17. The last contention of Mr. Mangukiya is that the District Registrar having been a Member of the Managing Committee of the respondent society at the relevant time, could not have initiated inquiry and that the District Registrar ought to have been subjected to the inquiry. The argument is that the District Registrar became a judge in his own cause. Strong reliance is placed on the the decisions of this Court in the case of Shankarbhai

Devjibhai Patel & Others Vs. Sabarkantha Jilla Sahakari Kharid Vechan Sangh Ltd. & Others, reported in 1984 GLH 498 and in the case of Bhogilal Jethalal Patel Vs. Yusufbhai Ramanlal Gajiawala & Others, reported in 16 GLR 215.

18. The decisions relied upon by Mr. Mangukiya, learned counsel for the petitioner do not carry the petitioner's case any further, because the evidence on record and findings given by the Inquiry Officer and the Tribunal clearly show that it was under the instructions of the petitioner as President and Bavchandbhai Patel as Secretary, that the orders in question were placed with the agencies in which or in the sister concerns of which the petitioner himself as well as Bavchandbhai Patel had interest. It was not the petitioner's case that the District Registrar had any interest in any of those firms. It was also not the defence of the petitioner that the Managing Committee had passed any resolution authorizing the petitioner or the Secretary to place orders with the aforesaid concerns. Even in his reply and through the suggestions made in the cross-examination of the Inquiry Officer who conducted the inquiry under Sec. 86 of the Act, it was not the case of the petitioner that the District Registrar was a party to any of the decisions, which were the subject matter of the inquiry in question. Hence there being no occasion to hold an inquiry against the then District Registrar, Amreli, appointment of the Inquiry Officer by the District Registrar under Sec.93 of the Act on 31-5-1977 did not amount to violation of the principle of nature justice that no man shall be a Judge in his own cause. In view of the aforesaid factual background, the decisions of this Court rendered in Shankarbhai Devjibhai Patel (supra) , and in Bhogilal Jethalal Patel (supra) are also not applicable to the facts of the present case.

19. In view of the above discussion, there is no merit in the petition. The petition, therefore, deserves to be dismissed. The petition is accordingly dismissed.

20. Rule is discharged with no order as to costs.

Date:13/07/1999 (M.S.SHAH,J.)
(ccshah)